FILE
JUN 21
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

No. 789

MARGARET DE KORWIN, INDIVIDUALLY, AND AS EXECUTRIX OF THE ESTATE OF JOSEPH MARIA DE KORWIN, DECEASED, AND JOHN EDWARD SULLIVAN,

Petitioners,

vs.

THE FIRST NATIONAL BANK OF CHICAGO, ET AL.,

Respondents.

BRIEF OF RESPONDENTS, MARIE JULIA YOUNG KAUFMAN PRATT, OTTO YOUNG KAUFMAN, CATHERINE OTTOLIE YOUNG BREWSTER COCHRAN, ANN ELIZABETH YOUNG SAGE, NANCY YOUNG SHAW, WALTER F. WICKES, JR., CATHERINE YOUNG ALEXANDER, AND JOHN WILLIAM YOUNG MARTIN, IN OPPOSITION TO PETITION FOR CERTIORARI OF MARGARET de KORWIN.

DAVID A. WATTS,
Chicago, Illinois,
Attorney for Marie Julia Young Kaufman Pratt, Otto Young Kaufman, Catherine Ottolie Young Brewster Cochran, Ann Elizabeth Young Sage, Nancy Young Shaw, Walter F. Wickes, Jr., Catherine Young Alexander, and John William Young Martin, Respondents.

Of Counsel:
BELL, BOYD, MARSHALL & LLOYD,
135 South La Salle Street,
Chicago, Illinois.

THE DUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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MAY IT PLEASE THE COURT:

This brief is filed in behalf of Otto Young's sole surviving daughter, Mrs. Pratt, and seven of his grandchildren, respondents herein, and petitioners in Nos. 771, 772, and 773.

The Court's attention is respectfully directed to the following facts:

(1) Under the Will of Otto Young, Mrs. Pratt is the sole surviving beneficiary authorized to participate in the appointment of a successor trustee in the event of a vacancy in the trusteeship. (R. 157, 318; see family tree attached to petition in Nos. 771-773.) In the District Court Mrs. Pratt testified as follows:

> "Q. At the time that these consolidations occurred, two of your sisters were alive, Selma Cecile and Laura were alive. First of all, did you ever make any suggestion to anyone, to them or to the bank or anyone else, of the appointment of a new trustee at that time?
>
> "Mr. Aiken: Excuse me, Mr. Dammann. You mean her sister Catherine. Laura was dead at that time."
>
> By Mr. Dammann:
>
> "Q. The three of you alive were Selma Cecile, Catherine and yourself?
>
> "A. Yes.
>
> "Q. And my question is whether at that time or any time you ever made any suggestion to them, or they to you, that there should be a new trustee appointed?
>
> "A. No, at no time.
>
> "Q. Mrs. Pratt, are you satisfied with the First National Bank & Trust Company acting as trustee in this estate?
>
> "Mr. Aiken: Objection, your Honor.
>
> "The Court: Well, we will make the same ruling."
>
> By the Witness:
>
> "A. Yes, I am."
>
> By Mr. Dammann:
>
> "Q. Do you wish it to continue to act as trustee?
>
> "A. What did you say?
>
> "Q. Do you wish it to continue to act as trustee?
>
> "A. I do." (R. 319-320.)

(2) All of these respondent-beneficiaries advised the District Court and the Court of Appeals that the trustee had rendered periodic statements of account to the income

beneficiaries; that they knew of no charge, nor any basis for a charge, of maladministration of the trust; that they considered plaintiff's position completely technical; and that they saw no reason why the trustee, who has managed these extensive properties so long, and so well, should not continue in the trusteeship. (R. 391; Brief in Court of Appeals, p. 13.)

In this Court these respondents desire merely to reaffirm the position which they took in the District Court and in the Court of Appeals. Although an accounting from The First National Bank on principles of *de son tort* liability might under the language of some decisions yield a substantial recovery to all the beneficiaries including these respondents, since all beneficiaries must be treated alike; nevertheless, these respondents wish to emphasize that any surcharge on technical principles of liability appears to them to be most unconscionable.

It is respectfully submitted that the petition for certiorari in No. 789 should be denied.

DAVID A. WATTS,
Attorney for Marie Julia Young Kaufman Pratt, Otto Young Kaufman, Catherine Ottolie Young Brewster Cochran, Ann Elizabeth Young Sage, Nancy Young Shaw, Walter F. Wickes, Jr., Catherine Young Alexander, and John William Young Martin, Respondents.

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